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U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



**U.S. Citizenship
and Immigration
Services**

87

DATE: **NOV 10 2011**

Office: VERMONT SERVICE CENTER

FILE: [REDACTED]

IN RE:

Petitioner:

Beneficiary:

PETITION: Petition for a Nonimmigrant Worker under Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

DISCUSSION: The Director, Vermont Service Center, denied the petition for a nonimmigrant visa. The petitioner subsequently filed a motion to reopen and reconsider, which the director dismissed as untimely. The director also dismissed the petitioner's second motion, affirming his prior determination that the initial motion was filed untimely. The matter is now before the Administrative Appeals Office (AAO) on appeal. The AAO will withdraw the director's decisions and remand the matter to the director for review of the petitioner's motion to reopen and reconsider filed on February 25, 2008.

The petitioner filed this nonimmigrant petition seeking to employ the beneficiary as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner is a Georgia corporation which intends to operate a retail store management business. It claims to be an affiliate of [REDACTED], located in Mumbai, India. The petitioner seeks to employ the beneficiary as the general manager of its new office in the United States for a period of one year.

The director denied the petition on January 22, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in the United States in a qualifying managerial or executive capacity within one year of the approval of the petition.

On February 25, 2008, the petitioner filed a combined motion to reopen and reconsider, disputing the director's grounds for denial and supported by a brief and additional documentary evidence.

On March 18, 2009, the director dismissed the motion as untimely filed pursuant to the regulations at 8 C.F.R. § 103.5(a)(1)(i), based on a determination that the motion was not submitted within the required 33 days of the disputed decision.

The petitioner filed a second motion to reopen and reconsider on April 20, 2009. On motion, counsel argued that the first motion was in fact timely filed.

On September 14, 2009, the director dismissed the second motion pursuant to the regulation at 8 C.F.R. § 103.5(a)(4). The director observed that the petitioner's initial motion to reopen and reconsider the decision was filed 35 days subsequent to the date of the director's decision, and was therefore late. The director noted that the motion was correctly dismissed as untimely filed.

The matter is now before the AAO on appeal. In a letter submitted in support of the appeal, counsel states:

[USCIS] denied the I-129 on January 22, 2008. [USICS] receipted the I-290B on February 25, 2008. These facts are undisputed. Thirty-three days from January 22, 2008 is SUNDAY, February 24, 2009 [sic] . . . Pursuant to 8 C.F.R. 1.1(h):

[t]he term day when computing the period of time for taking any action provided in this chapter including the taking of an appeal, shall include Saturdays, Sundays, and

legal holidays, except that when the last day of the period so computed falls on a Saturday, Sunday or a legal holiday, the period shall run until the end of the next day which is not a Saturday, Sunday, nor a legal holiday.

Herein, because the deadline falls on Sunday, February 24, 200[8], the deadline is extended to run until the end of the next day which is Monday, February 25, 200[8]. Again it is undisputed that the motion was received on February 25, 200[8]. Therefore, the first motion was NOT untimely filed.

Upon review, counsel's assertions are persuasive. The petitioner's initial motion filed on February 25, 2008 was not untimely and should not have been dismissed for this reason.

In order to properly file a motion, the regulation at 8 C.F.R. § 103.5(a)(1)(i) provides that the affected party must file the motion within 30 days after service of the unfavorable decision. If the decision was mailed, the motion must be filed within 33 days. *See* 8 C.F.R. § 103.5a(b). The date of filing is not the date of mailing, but the date of actual receipt. *See* 8 C.F.R. § 103.2(a)(7)(i). In this case, we concur with counsel that the initial motion was timely filed. Thirty-three days from the date of the director's decision was February 24, 2008. This date fell on a Sunday. If the last day of the designated period falls on a Saturday, Sunday or a legal holiday, the period will run until the end of the next day, which is not a Saturday, Sunday, or legal holiday. *See* 8 C.F.R. § 1.1(h). Therefore the deadline for filing the motion was Monday, February 25, 2008.

Accordingly, the director's decisions dated March 18, 2009 and September 14, 2009 are withdrawn. The matter is remanded to the director for review of the initial motion to reopen and reconsider that was filed on February 25, 2008 and entry of a new decision, which, if adverse to the petitioner, shall be certified to the AAO.

As always, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361.

ORDER: The petition is remanded to the director for further action in accordance with the foregoing discussion and entry of a new decision which, if adverse to the petitioner, shall be certified to the Administrative Appeals Office for review.